

TAB 17

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

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| | x | |
| | : | |
| THE CITY OF HUNTINGTON, | : | Civil Action |
| | : | |
| Plaintiff, | : | No. 3:17-cv-01362 |
| | : | |
| v. | : | |
| | : | |
| AMERISOURCEBERGEN DRUG | : | |
| CORPORATION, et al., | : | |
| | : | |
| Defendants. | : | |

| | | |
|---------------------------|---|-------------------|
| | x | |
| | : | |
| CABELL COUNTY COMMISSION, | : | Civil Action |
| | : | |
| Plaintiff, | : | No. 3:17-cv-01665 |
| | : | |
| v. | : | |
| | : | |
| AMERISOURCEBERGEN DRUG | : | |
| CORPORATION, et al., | : | |
| | : | |
| Defendants. | : | |

BENCH TRIAL - VOLUME 28
BEFORE THE HONORABLE DAVID A. FABER, SENIOR STATUS JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

JUNE 16, 2021

1 (Proceedings resumed at 3:42 p.m. as follows:)

2 THE COURT: Before you resume, Ms. Wu, I've
3 been asked to make clear what the schedule as it now
4 stands is.

5 I understand Dr. Gilligan who is the defendants'
6 witness is available on July 2nd. That's Friday. And so
7 we'll start the defendants' case on that day, and then not
8 come back until July the 7th which I believe is a Wednesday.

9 Is that consistent with what I've told everybody
10 before?

11 MR. SCHMIDT: I think so, Your Honor. And as to
12 Dr. Gilligan, what we've agreed to with the plaintiffs is
13 he'll go on and off in a single day because he's got
14 vacation after that. And I think as a condition of doing
15 that, we've agreed to wrap him up by noon so that plaintiffs
16 have time to cross.

17 MR. FARRELL: I'm sorry. You said you would be
18 done by noon?

19 MR. SCHMIDT: By the noon break, yes.

20 MR. FARRELL: Then we definitely will be done.

21 THE COURT: Okay. Well, all right.

22 You may proceed, Ms. Wu.

23 MS. WU: Thank you, Your Honor.

24 BY MS. WU:

25 Q. Dr. Yingling, welcome back. Do you still have in

1 **Q.** I think you may have been anticipating the question
2 that I was going to ask which is that this reflects that you
3 and the other healthcare professionals on the Coalition had
4 made a finding that there were pharmacists whom the Opioid
5 Reduction Act, Senate Bill 573, had dissuaded from
6 dispensing necessary medication to patients who were in
7 pain; correct?

8 **A.** Correct, one of the reasons.

9 **Q.** You agree that there are patients for whom prescription
10 opioids are necessary medical care; is that right?

11 **A.** State it again.

12 **Q.** You agree that there are patients for whom prescription
13 opioid medication is necessary medical care?

14 **A.** Yes.

15 **Q.** That's part of what's reflected in the Coalition's
16 findings here; correct?

17 **A.** Sure.

18 **Q.** I want to go back to the first page of the report.

19 And, again, in the overview paragraph, we touched on
20 this just a moment ago, the sentence about balance.

21 It says that one of the Coalition's jobs is to attempt
22 to strike a balance between regulation, patient needs, and
23 clinical judgment of physicians.

24 You agree that that balance is important; correct?

25 **A.** I agree.

1 **Q.** And that includes the ability of physicians to exercise
2 their clinical judgment in deciding how to treat patients
3 who are suffering from pain. That's important; right?

4 **A.** I agree.

5 **Q.** And part of what this report reflects is that that
6 balance is difficult to strike; correct?

7 **A.** There are struggles, yes.

8 **Q.** And, in particular, that limits on the prescribing of
9 opioid pain medications here in West Virginia have had in
10 some cases the unintended consequence of depriving patients
11 of necessary medical care; correct?

12 **A.** Counsel, my answer needs to be framed in, in the
13 consideration of the population of patients, the population
14 of citizens we're talking about here.

15 Yes, we are trying to strike a balance for a small
16 population of individuals in our state who have chronic
17 pain. That's what our attempt was.

18 So I don't want to be found generalizing outside of
19 this very specific population. For that specific
20 population, my answer is "yes."

21 **Q.** And part of what this report reflects, and the findings
22 that are included in here reflect, is that doctors and
23 healthcare professionals, including the folks on this
24 Coalition, with decades of experience in pain management are
25 still sorting out the right way to strike that balance; is